



10-8-03

AF/37483

PTO/SB/21 (08-03)
Approved for use through 08/30/2003. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TRANSMITTAL
FORM**

(to be used for all correspondence after initial filing)

Application Number	10/051,003
Filing Date	01/18/2002
First Named Inventor	Patrick C. Marks et al
Art Unit	3748
Examiner Name	Tu M. Nguyen
Attorney Docket Number	9319

Total Number of Pages in This Submission

16

ENCLOSURES (Check all that apply)

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form
<input type="checkbox"/> Fee Attached
<input type="checkbox"/> Amendment/Reply
<input type="checkbox"/> After Final
<input type="checkbox"/> Affidavits/declaration(s)
<input type="checkbox"/> Extension of Time Request
<input type="checkbox"/> Express Abandonment Request
<input type="checkbox"/> Information Disclosure Statement
<input type="checkbox"/> Certified Copy of Priority Document(s)
<input type="checkbox"/> Response to Missing Parts/Incomplete Application
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)
<input type="checkbox"/> Licensing-related Papers
<input type="checkbox"/> Petition
<input type="checkbox"/> Petition to Convert to a Provisional Application
<input type="checkbox"/> Power of Attorney, Revocation
Change of Correspondence Address
<input type="checkbox"/> Terminal Disclaimer
<input type="checkbox"/> Request for Refund
<input type="checkbox"/> CD, Number of CD(s) _____ | <input type="checkbox"/> After Allowance communication to Technology Center (TC)
<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Status Letter
<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
|--|---|--|

Remarks

Certificate of Express Mailing
Return Receipt Postcard

RECEIVED
OCT 10 2003
TECHNOLOGY CENTER R3700

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	William W. Habelt
Signature	<i>William W. Habelt</i>
Date	October 7, 2003

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

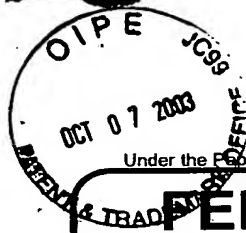
Typed or printed name

Signature

Date

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



FEE TRANSMITTAL for FY 2004

Effective 10/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 330.00

Complete if Known

Application Number 10/051,003
Filing Date 01/18/2002
First Named Inventor Patrick C. Marks et al
Examiner Name Tu M. Nguyen
Art Unit 3748
Attorney Docket No. 9319

RECEIVED

OCT 10 2003

TECHNOLOGY CENTER R3700

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit
Account
Number
Deposit
Account
Name

03-0835

Carrier Corporation

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

FEE CALCULATION

1. BASIC FILING FEE

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$) 0.00

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

		Extra Claims		Fee from below		Fee Paid
Total Claims	<input type="text"/>	-20** =	<input type="text"/>	X	<input type="text"/>	<input type="text"/>
Independent Claims	<input type="text"/>	-3** =	<input type="text"/>	X	<input type="text"/>	<input type="text"/>
Multiple Dependent					<input type="text"/>	<input type="text"/>

Large Entity		Small Entity		Fee Description
Fee Code	Fee (\$)	Fee Code	Fee (\$)	
1202	18	2202	9	Claims in excess of 20
1201	86	2201	43	Independent claims in excess of 3
1203	290	2203	145	Multiple dependent claim, if not paid
1204	86	2204	43	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity		Small Entity		Fee Description	Fee Paid
Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for ex parte reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	330.00
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
1801	770	2801	385	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 330.00

SUBMITTED BY

Name (Print/Type) William W. Habelt

Registration No. (Attorney/Agent)

29,162

(Complete if applicable)

Telephone 315.433.4819

Signature

William W. Habelt

Date 10/07/2003

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.10

I hereby certify that, on the date shown below, this correspondence (identified below) is being deposited with the United States Postal Service in an envelope addressed to Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, under 37 C.F.R. 1.10 as "Express Mail Post Office to Addressee"

Express Mail Label No.: EU504913421US

On October 7, 2003


William W. Habelt

Date of Signature: October 7, 2003

RECEIVED

OCT 10 2003

TECHNOLOGY CENTER R3700

The following items of correspondence are being transmitted under this Certificate of Mailing re:

Applicant: Patrick C. Marks, et al
Serial No.: 10/051,003
Filed: January 18, 2002
Title: MULTIPLE FREQUENCY HELMHOLTZ RESONATOR

Transmittal Form - 1 page
Fee Transmittal - 2 pages (original and one copy)
Return Receipt Postcard
Reply Brief - 12 pages (4 page brief in triplicate)



Attorney Docket No. 9319

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#16
10-14-03

In re)	
Application of)	Examiner: TU M. NGUYEN
PATRICK C. MARKS ET AL.)	Art Unit: 3748
Serial No.: 10/051,003)	Docket No: 9319
Filed: JANUARY 18, 2002)	
For: MULTIPLE FREQUENCY)	
HELMHOLTZ RESONATOR)	

REPLY BRIEF

RECEIVED
OCT 10 2003
TECHNOLOGY CENTER R3700

Syracuse, New York
October 2, 2003

Commissioner for Patents
Alexandria, Virginia 22313

Sir:

This is responsive to the Examiner's Answer.

In the Examiner's Answer in the second paragraph on page 7, the Examiner states that "(t)he phrase 'continuous' is defined in a dictionary as 'marked by uninterrupted extension in space, time or sequence'. Thus, in a view point of time (emphasis supplied), as shown in Figure 2, the closed chamber (9) in Jessberger defines a Helmholtz resonator which is continuously operatively connected to the inlet line (1) via a

10/10/2003 DTESSEM1 00000042 10051003

01 FC:1402

330.00 DA

restricted connection (7) to reduce noise in the engine at all times (or for an uninterrupted extension of time), regardless if the connection (7) is open or closed." This interpretation of continuous gives no weight to "uninterrupted" as part of the recited definition and gives no weight to open or operative versus closed or inoperative relative to the functioning of the restricted connection for attenuation noise.

In claims 3, 7 and 9, there is a recitation of "a Helmholtz resonator continuously operatively connected to said inlet line via a restricted connection" and this is believed to positively recite a restricted connection that is continuously connected to the inlet line which equates to open. Claims 3 and 7 further recite "means for attenuating noise" which is further defined as "includ(ing) at least one restricted connection which is selectively connected between said chamber and said inlet line" and this is believed to positively recite a second restricted connection. Further, it is believed that the terms "continuously connected" and "selectively connected" are mutually exclusive and cannot apply to the same restricted connection. This interpretation is contested by the Examiner in the first full paragraph on page 8 of the Examiner's Answer. While the Examiner correctly states that "(i)n claim 3 or 7 of the pending application, there is only one means plus function limitation", it appears starting at line 6 of claims 3 and line 7 of claim 7. There is a positive recitation of structure prior to the positive recitation of the means plus function and the Examiner ignores this recitation of structure as being separate from the means plus function structure. Accordingly, the Examiner concludes that the means plus function recitation incorporates the previously positively recited structure stating that "(t)his limitation [the prior recited structure] recites 'a restricted connection which is selectively connected between the chamber and the inlet line.'"

The Examiner further correctly states in the first full paragraph on page 8 that "(t)he limitation that recited 'a restricted connection which is continuously operatively connected between the chamber and the inlet line' is not a means plus function limitation." Since it is just a pipe it is not believed to require, or justify, a means plus function recitation. The Examiner, however, concludes "(t)hus, based on the means plus

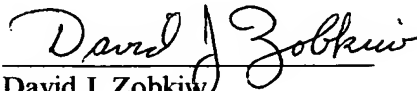
function limitations and because of the absence of the phrases 'first' and 'second' in these claims, the Examiner has determined that the limitations in claim 3 or 7 fail to specify two restricted connections for any embodiment in the pending application." The Examiner, states that "in the broadest reasonable interpretation of claims 3 and 7, the examiner has concluded that the restricted connection (7) in Jessberger is selectively, continuously, and operatively connected between the chamber (9) and the inlet line (1)." It is believed that this conclusion is clearly erroneous.

Claim 9 recites "a valve having only an open and a closed position" and in the last paragraph on page 9 of the Examiner's Answer, the Examiner argues that this is disclosed in Jessberger and states that "(a)s indicated on lines 10-13 of column 3, with regard to opening and closing of the restricted connections (7,8), the valve (10) in Jessberger has only an open and a closed position. This is further confirmed by analyzing Figure 3. As can be seen the design of valve (10) makes it impossible to either open or close both restricted connections (7, 8). The phrase 'or also both can be open or closed' on line 14 of column 3 clearly indicates a design feature of a different valve for a different embodiment because of the word 'or' at the beginning of the phrase."

The Examiner is clearly wrong on all of the conclusions with respect to valve 10. The valving action of valve 10 is only described in a single sentence at column 3 lines 10-14 which describes a single embodiment having four valving positions. With reference to Figure 3, rotation of valve 10, 30°, or so, in a clockwise direction or 60°, or so, in a counterclockwise direction would have both 5 and 6 open. Note the structure clockwise of the lead line for numeral 10 in Figure 3 and that patent drawings need not be drawn to scale. Rotation of valve 10 in a clockwise direction 150°-180°, or so, could block both 5 and 6.

In summary, it is believed that the claim language and reference have been misinterpreted and that claims 3, 7 and 9 are allowable over Jessberger.

Respectfully submitted,
PATRICK C. MARKS ET AL.


David J. Zobkiw
Reg. No: 26,627
Tele: (315) 433-4819
Fax: (315) 433-4075

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope address to:
Commissioner for Patents, Alexandria, Virginia, 22313

Date of Deposit

Name of Applicant, Assignee, or Registered Representative

Signature

Date of Signature